CANCELED HOLMES'S JAIL SENTENCE.

Excessive Zeal of the Court Justly Counteracted by the Governor.

Governor Matthews yesterday granted a pardon to John W. Holmes, a prominent and wealthy citizen, over seventy years of age, who was given a light jail sentence by the Circuit Court of Jackson county for election bribery. Holmes, it seems, is a Republican farmer residing a few miles out of the town of Madura. One night a few days before the late election he discovered a man in the act of erecting a Democratic pole in front of his, Holmes's, yard. Much exercised over the preparations he set about to bargain with the Democrat for the removal of the odious emblem, and finally, for the consideration of $2 and a promise of $3 after the election, the pole-raiser departed. The balance due was promptly paid shortly after the election, but the matter was considered to be of the nature of attempted bribery. Holmes was arrested on that charge, and on conviction the court placed the penalty at ten days in jail, assessed a fine of $25 and disfranchised the old man for ten years. The disgrace attached to the jail sentence fell heavily upon the prisoner's family, and through the influence of friends and the fact of Holmes's prominence he was allowed to remain out of prison pending the action of the Governor. The fine and distranchisement will stand as assessed.

REFUSED TO BUY NEW CAPS.

Street-Car Conductors Locked Out for a Short Time—Trouble Settled.

An incipient strike of the street-car motormen on the Columbia and Clifford avenue lines occurred yesterday morning at the Louisiana-street stables, but was settled with but little delay to travel. The trouble grew out of the order issued Dec. 6, by the company, that on and after Jan. 27, conductors should go on duty with a new uniform cap. A number of the men had provided themselves with the caps adopted by the company some months ago and refused to buy the new ones. Yesterday morning when eight conductors appeared at the stable without having conformed with the recent rule the stable foreman informed them that other men would take their places. The motormen at once rebelled and refused to work with the non-union conductors. All efforts toward an adjustment of the difficulty were futile, and business on the lines running out of the Louisiana-street stables was at a standstill for an hour. The cars were finally started and a committee for the employes delegated to call on Superintendent Lewis. The result of the visit proved satisfactory, and the union men will return to work to-day with their old caps.

HIGERT-JOINER CASE DISMISSED.

Terra Cotta Company Not Involved in the Suit—Properties Retransferred.

The suit referred to yesterday as being filed in the Putnam Circuit Court by R. L. Higert against Joseph Joiner, superintendent of the Indianapolis terra cotta-works, wherein Mr. Joiner's holdings in the terra cotta company were involved, was yesterday compromised between Higert and Joiner and the case was dismissed. The terms of the compromise were a retransfer of the properties exchanged. The terra cotta company, it should be said, was in no pecuniary way involved in the suit. Mr. Joiner says that the statement that he agreed to see that Higert was given a position in the company worth $150 a month is absurd and unfounded.

In City Affairs

The usual brief session of the Board of Public Works was held yesterday morning. F. J. Van Vorhis and John S. Spann, representing property-owners, appeared and presented a petition asking that Kentucky avenue be opened from Merrill street to White river, in contemplation of a bridge to be placed at that point by the County Commissioners.

Another petition of property-owners asked that the water mains be extended on Washington street, from State street to Beville avenue. No action was taken with either.

The board addressed a letter to President Frenzel, of the street-railway company, and directed him to remove the piles of snow on various streets, caused by the operation of snow-plows on the lines.

The following pay-rolls were approved: Street commissioner, $211.82; sewer gang, $71.88; and bridge gang, $91.

SMITH THROWN OUT OF COURT

The Legislature Must Make a New Apportionment Law at This Session.

Democrats Fooled in Their Serene Confidence that the Supreme Court Would Overthrow the Gerrymander Decision.

Representative Ader Outlines the Policy of the Majority on the Subject.

Will Not Try to Satisfy the Republicans—Based on Majorities in Both Houses—Judges "Roasted" by State Officers.

DEMOCRATIC PROGRAMME.

Leaders Surprised at the Decision—Will Still Hold the Legislature.

It was freely stated in some quarters yesterday that the Democrats had a new gerrymander all ready to put through the Legislature. This is hardly possible. From frequent talks with Democratic legislators since the session began, it seems evident that the majority has been resting serene in the confidence that because the Supreme Court was now Democratic the petition of the Attorney-general would be taken up and the decision of the old court overthrown. So sure were they of this that Representative Ader felt rather insulted at being put at the head of the apportionment committee, which would have nothing to do.

Senator Smith, at the head of the Senate's apportionment committee, was not in the city yesterday, but some days ago when asked what the majority would do should the decision invalidating the gerrymander of 1891 stand, jocularly replied, "Why, we'd re-enact the old one."

After various little conferences and discussions among State officers and such leaders in the Legislatures as were in town yesterday afternoon a rough sort of a policy was outlined to a Journal reporter by Representative Ader, chairman of the House committee.

"I have read the decision," said he, "and though it does not touch upon the merits of the main question, there is no doubt that it settles the gerrymander of 1891. And it means the death-knell to legislative gerrymanders as we have known them and the beginning of fairer divisions. As a member of the Legislature, I never have believed that with the power delegated to us by the people to apportion the State as we deem best that five men ought to be able to step in and say we cannot do it this way or that way, and compel us to do it to suit their fastidious tastes. But that is the law, and we cannot fly in its face. In consequence we must give the people a fairer apportionment law.

"This thing comes to us like a flash out of a clear sky, and we are totally unprepared with any measure to take the place of the law of 1891. We shall pass a new law and a fair one—from a Democratic stand-point. It will not be entirely satisfactory to you Republicans; in fact it will not be satisfactory to you at all. But Indiana is a Democratic State, and I am just partisan enough to believe that its government should be Democratic in all its branches. I think the next gerrymander is likely to be based on a majority of about eight in the House and five in the Senate.

"A curious question is likely to arise from this decision," continued Mr. Ader. "What is to become of the twenty-five holdover Senators elected this year? Are they to be de facto officers still after this Legislature adjourns?"

Representative Sulzer, who was sitting by, entered the discussion, and both came to the conclusion, after some argument, that unless ousted by court these Senators would probably serve in the next Legislature.

TEXT OF THE DECISION.

Opinions Are a Clear, Learned and Manly Statement of the Law.

The Supreme Court yesterday handed down an opinion, refusing a rehearing in the apportionment case, for which motion had been made and briefs filed ad libitum by the Attorney-general. The opinion prevailed by four to nothing, Judge Howard, who wrote the chief opinion, receiving the concurrence of Judges Hackney, Olds and Coffey. Judge McCabe dissented, but had, it is presumed, no reasons to give, for he wrote out none. When the judges met yesterday for consultation it was not apparent what amount of agreement there was between them. Judge Howard was assigned to write the opinion of the court, and Judge Coffey made known that he would write an individual opinion. It developed, when the opinions were compared, that Judge Howard, speaking for himself and Judge Hackney, and Judge Coffey for himself and Judge Olds, reached the same conclusion, which, therefore, became the opinion of the court. Both are printed below. After a reference to the Attorney-general the opinion goes on to say that his petition, as chief law officer of the State, and because of the importance of the questions involved, is entitled to the gravest consideration. The court said:

A petition for rehearing is a request to the court to revise its own action by correcting errors and modifying or setting aside its judgment. The statute, Sec. 662, R. S., 1881, provides that at any time within sixty days after the determination of a cause either party may file a petition for a rehearing. The question at the outset, therefore, is whether the Attorney-general is himself a party to this action or whether he represents such party.

Besides the special duties of the Attorney-general provided for in various statutes, his general duties are named in Sections 5639 and 5666 of the Revised Statutes of 1881. Section 5659 provides that "such Attorney-general shall prosecute and defend all suits that may be instituted by or against the State of Indiana, the prosecuting or defending of which is not already provided for by law, whenever notified ten days of the pendency thereof by the clerk of the court in which such suits are pending, and whenever required by the Governor or a majority of the officers of State, in writing, to be furnished him within a reasonable time, for the purpose therein contemplated. And he shall prosecute and defend all criminal or State prosecutions that are now or hereafter may be pending in the Supreme Court of the State of Indiana."

This is not a suit by or against the State, although it is prosecuted by a relator in the name of the State. It is a suit for mandate, which is already provided for by law. Neither has the Governor, nor a majority of the State officers, nor any clerk of a court required or notified him to prosecute or defend in the case. Neither is it a case in which any criminal or State prosecution is pending in the Supreme Court. Section 5666 provides that "the Attorney-general shall be required to attend to the interests of the State in all suits, actions or claims in which the State is or may become interested in the Supreme Court of this State." By this section he is made the law officer of the State in all matters before the Supreme Court in which the State has interests involved. This raises the question as to the interests of the State in this action, and particularly as to whether she is a party to it. The interests of the State here concern the constitutionality of a law affecting the membership of the legislative department of the State government. We can hardly conceive of any suit before the court which could be of greater interest to the State, and it is eminently proper that the Attorney-general should attend to those interests. This the court recognized in granting leave to the Attorney-general to appear in the case in the order heretofore made, as follows: "It further appearing to the court that the matters involved in said cause are such as effect the entire people of the State, and are of great importance, it is ordered that leave be granted to the Attorney-general of the State to appear in behalf of the people, and to take such steps as he may deem necessary to aid the court in reaching a just determination thereof."

This order of the court and the active participation of the Attorney-general in the proceedings in appeal are in full harmony with the spirit of the statute. But did this appearance, or the order of the court, or the grave interests of the people in the case constitute the State a party? The order of the court could not make one a party who was not already a party in reality. It could only admit one to be a party who was already in fact and in law a necessary or a proper party to the suit. Could the important interests of the people make the State such a party? The people of the State are vitally interested in the decision of the constitutionality of every general law that before the court, but we should not for this reason say that the State should be a party to every suit that involved the constitutionality of a law of the State. It is the duty of the Attorney-general to attend to the interests of the State when involved in a matter before the court. He comes there as an officer of the State to advise one of the three departments of the State government in such manner "as he may deem necessary to aid the court in reaching a just determination" of the matters that concern the interests of the State. The parties are already before the court, but as we think neither the State itself, nor the Attorney-general as representing the State, is any more a party than if the matter were one to be decided by the executive or the legislative department of the government. Each department, in its own sphere, is the State, and as such guards the rights of the State, not as those of a stranger or mere suitor before it, but as those of the body-politic, of which it is itself a part.

It can hardly be said that by reason of the decision rendered in the matters in controversy between the parties that the interest of the State and the people have not received due consideration. The Attorney-general as a sworn officer of the State has done his duty as he saw it, and advised the court with great learning and ability. And it must be remembered besides, that those constituting the court were themselves also sworn officers of the State, and, as a court, even constituted an integral part of the State government. Whether they decided the matter before them as the Attorney-general thought right, or whether they decided them as the court as now constituted would have done, does not affect the question as to whether the decision so rendered can now be reviewed by the court, in this case, and as to the issues between the parties.

We are of opinion that in such appearance the Attorney-general is, in the strictest legal sense, a friend of the court, and not a party, nor the representative of any party to the suit before it. He has aided the court in its labors to reach a just decision of the case. That decision, whether right or wrong, has been reached, and his friendly office is ended. The parties have litigated the matters at issue between them, and have withdrawn in so far as they can from the jurisdiction of the court. We think he can not petition for a rehearing of the matters that have been tried and decided between them. Counsel for appellee in one of their briefs call the Attorney-general an intervenor in this case, but from what has been said of his office before the court he cannot be an intervenor. As the law officer of the State he has aided and advised the court, even as he might have given his legal opinion to the Governor when requested. But no judgment could be rendered for or against him, or for or against the State, as might be done in case of an intervenor.

But although we do not think that the Attorney-general can petition in this case, as a party, for a rehearing, yet we have no doubt that the case, like all others, is still before the court in case error or mistake has been made. The court may correct its own record, either on its own motion or on being advised of the mistake by any party in interest. In the case of Board, etc., vs. Brown, 14 Ind., 191, a petition for rehearing was filed more than sixty days after the decision. The court could not grant a rehearing, but it appearing that a decision had been rendered against one who had not been before the court, the court on its own motion granted a rule upon the other party to show cause why the decision should not be revoked.

In Taylor vs. Elliott, et al., 52 Ind., 588, this court fully considered and decided its power to modify, correct or set aside its own decision in a proper case.

In Crowell vs. Jaqua, reported in 15 N. E. Rep. 242, (114 Ind. 246) this court set aside one opinion on account of inadvertent error, and substituted another in its place. In Elliott's Appellate Procedure, Section 550, the power of the court to correct its own errors is expressly maintained. Of this power there can be no doubt, but that is not the question before us. There is no mistake of fact, no inadvertence, "no errors into which the court may have fallen," but a deliberate decision of issues upon facts admitted by the parties. These parties have departed from the jurisdiction of the court, under the rules of the court as established in pursuance of the provisions of the statute, and we do not think that the issues litigated between them can have a rehearing in this court.

The intervenor, Morgan Chandler, has also filed his petition for rehearing of the cause, but he has filed no brief in its support, and under the rules of the court it cannot therefore be considered.

We are besides of opinion that as there was no decision adverse to him, he cannot have anything upon which to base his petition for rehearing.

It is therefore ordered and adjudged by the court that the petitions for a rehearing now on file in this cause be, and the same are hereby rejected.

At the conclusion of this opinion are the words, "McCabe, J., dissents." Then follows Judge Coffey's opinion, in which the conclusion is the same but is reached by a different course of reasoning. He makes very clear the fact that the Supreme Court has no further jurisdiction in the case, as follows:

CHIEF JUSTICE COFFEY'S OPINION.

On the 3d day of January, 1893, a petition for a rehearing in this cause was filed on behalf of the Attorney-general of the State. Before any consideration of such petition we are met by the grave question as to whether we have any jurisdiction in the case. If we have jurisdiction, no great public inconvenience is likely to arise by reason of any action taken by the court in the cause, but on the other hand, if we have no jurisdiction, any action we may take will be a mere nullity. The granting of a rehearing under such circumstances would not annul the former adjudication holding the apportionment acts of 1879 and 1891 invalid. The evil consequences likely to follow upon the attempted enforcement of laws which stand authoritatively adjudged invalid can readily be foreseen. As to the manner in which, or in what tribunal, the question of the validity of such an attempt may arise, no one at this time can foretell, but that it would arise in some form, in the event we should assume to act without jurisdiction, is reasonably certain. The question of jurisdiction over the case necessarily arises upon the record.

Section 662, R. S., 1881, provides that "When any cause is determined in the Supreme Court, the clerk shall forthwith notify the clerk of the court below that it is determined, and whether reversed or affirmed, in whole or in part, or dismissed. At any time within sixty days after such determination, either party may file a petition for a rehearing, and if not so filed, the decision and instructions of the Supreme Court shall be certified to the court below, unless otherwise ordered by the court."

Rule 38 of this court provides that "Opinions and judgments shall not be certified to the court below by the clerk of this court, except in criminal cases, until the expiration of sixty days, unless by order of this court, or on the filing of waiver of petition for rehearing, which order of court, or filing of waiver shall be certified by the clerk with the opinion."

The opinion of the court in this cause was filed on the 17th day of December, 1892, and on the 22d day of the same month the parties to this litigation, acting under the above statute and rule, filed in the clerk's office of this court the following waiver of the right to file a petition for rehearing, viz.: "Come now the parties, both appellants and appellee, and each severally and separately waive and relinquish the right to file a petition for a rehearing in this cause and accept as final and conclusive the opinion of the court heretofore rendered in this cause, and now ask that the court will order and direct the clerk of this court to immediately certify said cause and opinion to the clerk of the Henry Circuit Court, from which court the appeal in this cause was taken."

This waiver was signed by the attorneys of record for each of the parties, and was not only filed in the clerk's office, but the parties, in addition to such filing, procured an order of the court thereon requiring the clerk of this court to certify the cause according to this request and agreement of the parties.

The cause, pursuant to this agreement and waiver, and the order of the court was accordingly certified by the clerk of this court to the clerk of the Henry county Circuit Court. That this was a legitimate mode of taking the case from this court seems not to be doubted, and that the cause, as well as the parties to the suit are now beyond the power and control of this court I think is equally certain, unless some party remains here not having joined in the waiver, who is entitled to file a petition for a rehearing.

No petition is filed by the State, and if such petition was on file it would be a sufficient answer to it to say that it was not entitled to a rehearing without the consent of the relator to whom it has extended the use of its name for the enforcement of a private right, even if it had not joined in the waiver, which it has done.

A petition has been filed by Mr. Chandler, an intervenor, but it is not claimed that he is entitled to a rehearing. If such claim were made it would be sufficient answer to it to say that he has not filed a brief in support of his petition, and for this reason, under the well-known rules of this court, it is waived.

The only petition in the cause under which it is claimed we have the power to grant a rehearing is filed by the Attorney-general of the State. During the progress of the cause in this court the following order was made, namely: "It further appearing to the court that the matters involved in said cause are such as affect the entire people of the State and are of great importance it is ordered that leave be granted to the Attorney-general of the State to appear in behalf of the people and to take such steps as he may deem necessary to aid the court in reaching a just determination thereof."

It is now claimed by the Attorney-general that, by virtue of this order, he became a party to this suit. Unless this claim can be maintained, of course his petition is not entitled to consideration, for, as will be seen by reading the statue, no provision is made for filing a petition for a rehearing by any person other than a party.

The contention that the Attorney-general is a party to this suit would seem to be so destitute of plausibility as not to require a moment's consideration, were it not for the apparent earnestness with which he seeks to maintain it.

In the nisi prius courts parties are known as plaintiffs and defendants. In this court they are known as appellants and appellees. If the Attorney-general is a party to his suit, which is he, an appellant or an appellee? With whom is he litigating? What judgment shall be rendered either for or against him? He is not an intervenor, for no person can be such unless he has a personal interest in the controversy, and it will certainly not be contended that the above order embraces a right to set up a personal interest.

It was perfectly proper, I think, for the court, in view of the public interest involved in this case, to invite the Attorney-general, the chief law officer of the State, to aid it with his extensive knowledge of the law, in arriving at a correct conclusion, not in private consultation, but in open argument and by briefs. As he was the representative of the whole people of the State the court had the right to assume that he would stand impartial as between the parties and that he would honestly and faithfully, as a public officer, give to the court his views upon the new and intricate questions involved. That he did, by the able brief filed by him, give the court much aid is not to be denied. But it was not as a party to the suit that he was permitted to file briefs and argue the case. His relation to the court was simply that of an amicus curiæ. It is not the function of an amicus curiæ to take upon himself the management of a cause. (Anderson's Dictionary of Law; title, "Amicus Curiæ.")

The powers and duties of an amicus curiæ are well understood by the profession. In the case of Irwin vs. Armuth et al. (129 Ind., 340), it was said: "An amicus curiæ may appear, and, with the permission of the court, introduce evidence for his own benefit, but he cannot accept to any ruling made by the court, as he has no right to complain if the court refuses to except his suggestions."

This cause was certified to the Henry Circuit Court on the 22d day of December last. It may be that the judgment has been rendered by that court in accordance with the opinion and directions of this court. If so, can we now, by any action we may take, affect that judgment? I think not. In my opinion the moment this cause was certified to the Henry Circuit Court by order of this court we lost jurisdiction over it as fully as we would have lost it had the sixty days allowed to file petitions for a rehearing fully expired. For these reasons I am of the opinion that we have no jurisdiction and that we have no power to consider the petition for a rehearing filed by the Attorney-general.

RAISED A PARTY STORM.

Howard and Hackney Personally Called to Account for Their Courage.

Immediately after the Supreme Court sent down the decisions yesterday afternoon, about a dozen leading Democrats of the Legislature, the State officers, Green Smith and Clerk Sweeney flocked into Judge McCabe's room, sent out for Judges Howard and Hackney, and, with closed doors, had an exciting time. They indulged in loud arguments, lamentations, etc. It is presumed that Judges Howard and Hackney were roundly abused because they did not save the Legislature the ugly task of making another apportionment. It is the first time on record that judges of the Supreme Bench were personally taken to task for rendering a decision contrary to party notion. Smith is said to have repeated his favorite gesture when practicing law with a sandbag in Jennings county.